IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

OP.No. 14180 of 2002(K)

PETITIONER:

M.J. JOSE, PURATHUTTU HOUSE,
MYLAPRA TOWN, PATHANAMTHITTA DIST.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. **THE DEPUTY LABOUR COMMISSIONER,**
   THIRUVANANTHAPURAM (THE APPELLATE AUTHORITY
   UNDER SECTION 18 OF KERALA SHOPS AND COMMERCIAL
   ESTABLISHMENT ACT, 1960).

2. **THE PRESIDENT, SERVICE CO-OPERATIVE**
   BANK LTD.NO.639, MYLAPRA P.O.,
   PATHANAMTHITTA.

3. **THE SECRETARY, SERVICE CO-OPERATIVE**
   BANK LTD.NO.639, MYLAPRA P.O.,
   PATHANAMTHITTA.

BY ADV. SRI.P.RAVINDRAN
GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 14180 OF 2002 K

Dated this the 12th day of December, 2006

J U D G M E N T

An employee, who has been dismissed from service for serious acts of misconduct involving misappropriation of money and fabrication of documents, has come up before this court challenging Ext.P6 order of the appellate authority under the Shops and Commercial Establishments Act namely, Ext.P6, whereby the appellate authority, after finding the petitioner guilty of the acts of misappropriation, directed the management to pay an amount of Rs.75,000/- as compensation to the petitioner. The petitioner after admittedly accepting that amount of Rs.75,000/- paid as compensation by respondents 2 and 3 has come up before this court challenging that order.

2. The fact that the petitioner has accepted the compensation itself is a ground good enough to dismiss this original petition. However, I shall proceed to examine the contentions of the petitioner on merits also. Admittedly, the petitioner has been dismissed from service, after conducting a domestic enquiry. The first contention of the petitioner is that the enquiry is vitiated for non compliance of the principles of natural justice. The petitioner has, in the original petition, made a general

allegation that the enquiry is vitiated for want of compliance with principles of natural justice, without any specific details regarding the same. The appellate authority had considered this question as issue No.1 and entered the following findings thereon:

> *"Issue No.(1):- The contention of the appellant is that the domestic enquiry was not conducted properly and fairly and principles of natural justice was not observed and the domestic enquiry is defective. The charges levelled against him were vague and not specific and duly intimated to him. Reasonable time was not given to him to persue the records. The copy of the enquiry report was not given to him.*
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> *The contention of the respondent is not the Enquiry Officer has conducted enquiry properly and give reasonable opportunity to peruse all the records, he was required to file his objections. He was informed that he was at liberty to cross examine the witnesses. Sufficient opportunities were given to him to defend the case. The appellant did not turn up for enquiry.*
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> *From the enquiry report it is seen that the appellant is given due notice of the appointment of Enquiry Officer to enquire into the allegations levelled against him, he was directed to submit additional written statement of defence, he was informed that arrangements will be made to enable him to pursue the documents or to take extracts there from, he was given sufficient notice to pursue the records and appear before the Enquiry Officer for filing additional written statement and time was extended at the request of the appellant. The first respondent has intimated the Enquiry Officer that the appellant has perused all the relevant records except certain documents which were not available in the bank. After allowing several documents, as requested by the appellant, he was requested to be present for the enquiry at the Bank on 29-6-84. He was requested to participate in the enquiry personally or through counsel and he was informed that he can cross examine the witnesses of the*

Bank. The Bank authorities were also directed to furnish him a copy of the witness schedule and the list of documents to produce in the enquiry and allow the appellant to peruse and take down extracts. At the request of the appellant the venue of enquiry was shifted from Bank to Niza Tourist Home, Pathanamthitta.

From the enquiry proceedings it is seen that the Enquiry Officer has made earnest efforts for participating the appellant in the enquiry through letters dated 17-3-84, 10-05-84, 26-5-84, 16-6-84, 26-6-84 and 9-7-84. But the appellant has sought innumerable adjournments for filling his objections and requested either for perusal of records or for copy of documents through letters dated 15-3-84, 23-4-84, 5-5-84, 21-5-84 etc.

On perusal of enquiry proceedings, I am convinced that the Enquiry Officer afforded sufficient and reasonable opportunities to the appellant, for participation in the enquiry and defending the case. The genuineness of the conclusion arrived at by the Enquiry Officer is that appellant has been trying to protract the enquiry on one protext or another cannot be ruled out and due to the reason the Enquiry Officer had to proceed with the enquiry ex-parte. From perusal of enquiry report and proceedings, I am fully convinced that the enquiry officer has conducts the enquiry fairly and properly affording all reasonable opportunities for defending the case. "

3. A bare perusal of the above finding is sufficient to hold that there is absolutely no merit whatsoever in the contention of the petitioner in this regard. The above said findings make it abundantly clear that the enquiry officer had given the petitioner more than sufficient opportunity to defend himself in the enquiry. On the other hand, it was the petitioner, who tried to protract the enquiry by citing some reason or

other. As such, I find that there is absolutely no merit in the contention of the petitioner that the enquiry is vitiated for want of compliance with the principles of natural justice.

4. The second contention is that findings in the enquiry is perverse. For this, the petitioner relies heavily on the criminal court judgment in C.C. No.76/85, wherein the petitioner was acquitted of the charges of misappropriation levelled against him. However, the petitioner has not chosen to produce a copy of the same before this court although he had relied on the same before the appellate authority.

5. In this connection, I may note that earlier the appellate authority had, by Ext.P2 order, found in favour of the petitioner by relying on the very same criminal court judgment. The same was challenged by respondents 2 and 3 before this court in OP.No.8803/1986 in which a learned Single Judge has passed Ext.P3 judgment again in favour of the petitioner. However, in Writ Appeal, a Division Bench of this court disagreed with both the appellate authority and learned Single Judge. While considering the question as to whether the appellate authority could have absolved the petitioner relying on the criminal court judgment, the Division Bench held as follows:

> " *The next contention urged by the appellants relates to the merits of the case. The learned Single Judge has held, that the decision of the Appellate Authority does not call*

for interference, primarily for the reason that Shri.Pathrose was not examined in the enquiry. The learned Single Judge has found that he is a crucial witness and failure to examine the said witness vitiates the entire enquiry. It appears to us, that having regard to the nature of the charges levelled against Shri.Jose, the Bank could not have relied upon the evidence of Shri.Pathrose. If the enquiry was required to be held only in regard to the first charge, there is much to be said in favour of the contention, that Shri.Pathrose being a crucial witness and he being available for examination, failure to examine him would justify an appropriate adverse inference being drawn against the appellant bank. That is because, the first charge is to the effect that a loan has been taken by the first respondent by fabricating the records to make it appear that it was Shri.Pathrose who was making the application for taking the loan on the strength of his own fixed deposit in the Bank, by Shri.Jose fabricating the relevant documents and thereby misappropriating the loan amount of Rs.15,000/-. But it has to be noticed that there is also a further charge levelled against Shri.Jose to the effect that subsequently Shri.Jose, in oder to save himself, has managed to secure Shri.Pathrose on his side, took the documents duly signed by him and substituted the same in the records of the Bank in place of the documents, which he had earlier presented. The second charge, therefore, clearly indicates the complicity of Shri.Pathrose, as a person who had assisted Shri.Jose to save himself from being dealt with for the misconduct, which is the subject matter of the first charge. In a situation like this, where, according to the Bank's own case, Shri.Pathrose is virtually in the position of a conspirator, who has tried to held Shri.Jose, could not be expected to examine Shri.Pathrose in support of its case. If, in this background, the bank did not examine

Shri.pathrose, it is impossible to draw any adverse inference against the bank for its not examining Shri.Pathrose. The learned Single Judge proceeds to record a finding, after finding fault with the Bank for not examining Shri.Pathrose in the following terms:

> *"It would then follow that in the domestic enquiry, the basic evidence which requires to sustain a plea of guilty, was absent. The one witness who was indispensable in establishing the charge had not been examined. That would be sufficient to hold that the finding of guilty is totally perverse, capricious and unsustainable".*

It is, thus, clear that the entire finding of the learned single Judge which rests on the first inference drawn on failure to examine Shri.Pathrose was totally unjustified. There is no other discussion in the judgment of the learned Single Judge for coming to the conclusion, that the findings are perverse, capricious and not sustainable."

6. In view of this specific finding by the Division Bench to the effect that the petitioner could not have been absolved relying on the criminal court judgment, I need not delve deep into that aspect in this judgment. After examining all relevant documents and oral evidence of the witnesses produced by the Bank, the Appellate Authority has come to the conclusion that the first charge regarding misappropriation of money and substitution of connected file have been sufficiently proved and that the punishment imposed on him is proper and proportionate. The petitioner has not, apart from relying on the criminal court judgment

brought out anything to disprove the findings of the enquiry officer before me. He has not even chosen to produce a copy of the enquiry report. In so far as the findings of the appellate authority regarding the misconduct is a finding of fact on the basis of evidence in the enquiry, I am afraid that I cannot go into the contentions of the petitioner against those findings of fact, which process is alien to the jurisdiction under Article 226 of the Constitution of India, unless the findings are in any way perverse, which the petitioner has sadly failed to establish before me.

7. I find that after finding that the enquiry was proper, the misconduct has been proved and the punishment imposed has been proper and proportionate, the appellate authority has went on to direct the management to pay him compensation amounting to Rs.75,000/- which is to say the least surprising. However, since the employer has not chosen to challenge the same before me, I am not inclined to interfere with that part of the impugned order especially since the employer has already paid the amount which the petitioner has also accepted. In the above circumstances, I do not find any merit in this original petition and accordingly the same is dismissed.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.14180/02 K

J U D G M E N T

12th December, 2006